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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DONALD L. BRODIGAN and TOM T. THOMPSON

Appeal 2009-007399
Application 09/514,033
Technology Center 2400

Before CARLA M. KRIVAK, THOMAS S. HAHN, and
BRADLEY W. BAUMEISTER, *Administrative Patent Judges*.

BAUMEISTER, *Administrative Patent Judge*.

DECISION ON APPEAL

SUMMARY

Claims 1-11 stand rejected under 35 U.S.C. § 103(a) as obvious over Pinder (US 5,742,677; issued Apr. 21, 1998) in view of Anderson (US 6,219,042 B1; issued Apr. 17, 2001). Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's rejection of these claims.

We reverse.

STATEMENT OF THE CASE

Appellants describe their invention as follows:

A method for providing interactive programming over a broadband network. A service provider provides a private data packet including the provider's address that is inserted between frames of a transmission that is broadcast over the broadband network. The interactive video/data system may include a broadcast source, a broadband digital terminal, and a set top box for a consumer's television receiver. A data path may be enabled by the set top box upon receipt of the private data packet included with the video transmission. The private data packet includes application interface information communicated in real-time between the set top box and broadcast source in addition to the destination address.

(Abstract).

Independent claim 1 is illustrative:

1. A method for providing personalized interactive programming over a data path, the data path extending between a service provider and a set top box, the service provider being connected to a data network and having an address, the method comprising:

establishing a communication path between a broadband digital terminal and the set top box, the broadband digital terminal being connected to the data network and the service provider broadcasting video through the broadband digital terminal to the set top box;

sending a private data packet in addition to the broadcast video from the service provider, over the network and through the broadband digital terminal to

the set top box, the packet containing application interface information for the service provider and containing the service provider address; and

establishing an impulse pay-per-view communication path from the set top box through the broadband digital terminal and over the network to the service provider based upon the address to allow interactive programming using the application interface information between the service provider and the set top box to personalize the broadcast programming.

The Examiner finds that Pinder discloses substantially every limitation of independent claim 1, except that it “fails to explicitly teach where the messages includes [sic: include] broadcast video, etc.” (Ans. 4). The Examiner further finds, though, that Anderson teaches this missing claim limitation, and that motivation existed to combine these references’ teachings (*id.*).

Particularly, the Examiner finds that Pinder discloses the claim step of sending over the network, from the service provider to the set top box, a private data packet that contains application interface information for the service provider (*id.*). The Examiner explains that this step reads on the passage of Pinder that discloses “the service provider transmits messages containing their address, logo and graphics data and the like” (Ans. 4; *see also* Ans. 8).

Appellants alternatively contend “the shortcomings of Pinder are greater than acknowledged by the Examiner” (App. Br. 4). More to the

point, Pinder fails to disclose the claim step of sending a private data packet that contains a service provider's application interface information (App. Br. 4-5).

ANALYSIS

Appellants' contentions are persuasive. The passage of Pinder, upon which the Examiner relies, reads as follows: "Other information about the service provider may be transmitted in the clear (their address, logo and graphics data and the like), but this data is not required for providing or authorizing service to begin" (Pinder, col. 4, ll. 62-66). The Examiner has not provided any reasonable basis, though, to conclude that any of these disclosed types of information is synonymous with a service provider's application interface information. Nor has the Examiner alleged that, much less explained why, in light of this general disclosure, it would have been obvious to specifically transmit the claimed application interface information. As such, the Examiner has failed to demonstrate that it was known at the time of the invention to transmit a service provider's application interface information in the manner claimed.

For the foregoing reasons, Appellants have persuaded us of error in the Examiner's obviousness rejection of independent claim 1. Accordingly, we will not sustain the Examiner's rejection of that claim, or of claims 2-4, which depend from claim 1.

Independent claim 5 recites similar language: “a broadcast source at the destination address for transmitting a private data packet over a private virtual channel on the network, the packet containing application interface information and the destination address.” For the same reasons, we will not sustain the Examiner’s rejection of independent claim 5, or of claims 6-11, which ultimately depend from claim 5.

DECISION

The Examiner’s decision rejecting claims 1-11 is reversed.

REVERSED

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